

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF OREGON**
9 **PORLAND DIVISION**

10 **ANTHONY J. BRODZKI,**)
11 Plaintiff,)
12 vs.)
13 **UNITED STATES OF AMERICA,**)
14 Defendant.)
15

 03:11-cv-00878-HU
 **FINDINGS AND
RECOMMENDATION**

16 HUBEL, Magistrate Judge:

17 **Introduction**

18 This matter comes before the court on plaintiff Anthony J.
19 Brodzki's ("Brodzki") application [1] to proceed *in forma pauperis*.
20 The request to proceed *in forma pauperis* is granted solely for the
21 purpose of this Findings and Recommendation. For the reasons stated
22 below, however, the complaint should be dismissed.

23 **Brodzki's Litigation History**

24 As an initial matter, I note that Brodzki appears to be a
25 citizen of the state of Texas and is no stranger to the federal
26 judicial system. In fact, the Federal Judicial Public Access to
27 Court Electronic Records ("PACER") Service reflects that Brodzki
28 has filed more than 100 cases, including appeals, since September

1 2009. See <http://pacer.psc.uscourts.gov> (last visited January 10,
2 2012). Brodzki's lawsuits have been described as "wholly within
3 the realm of fantasy," *Brodzki v. Reg'l Justice Ctr.*, 10-CV-01091-
4 LRL (D. Nev. July 22, 2010), and have resulted in Brodzki being
5 monetarily sanctioned based upon his history of submitting
6 frivolous lawsuits. See *Brodzki v. N. Richland Hills Police Dept.*,
7 No. 10-CV-0539-P-BH (N.D. Tex. Mar. 31, 2010). The Northern
8 District of Illinois has also issued a vexatious litigant order
9 against Brodzki. See *In re Anthony J. Brodzki*, No. 10-CV-04591
10 (N.D. Ill. July 23, 2010).

Like this case, Brodzki's prior claims frequently involved allegations of electronic harassment by law enforcement. See, e.g., *Brodzki v. N. Richland Hills*, No. 1:11-cv-04683-ENV-CLP (E.D.N.Y. October 31, 2011) (noting that, as here, Brodzki sought \$50,000,000 in damages and an injunction stopping intrusions of the mind and body); see also *Brodzki v. Texas*, Nos. A-11-CA-223-SS, A-11-CA-337-SS, 2011 WL 2173615, at *3 (W.D. Tex. June 2, 2011) (stating that, "Brodzki has a history of filing frivolous lawsuits. He has alleged these same or similar facts in many previous suits, all of which have been dismissed."

Discussion

I. Legal Standard

This court must dismiss an *in forma pauperis* action if it (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B) (2006); see also *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (concluding that § 1915(e)(2)(B) applies to non-prisoners).

1 In order to state a claim, plaintiff's complaint must contain
 2 sufficient factual matter which, when accepted as true, gives rise
 3 to a plausible inference that defendants violated plaintiff's
 4 constitutional rights. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949
 5 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57
 6 (2007). "A claim has facial plausibility when the plaintiff pleads
 7 factual content that allows the court to draw the reasonable
 8 inference that the defendant is liable for the misconduct alleged."
 9 *Iqbal*, 129 S. Ct. at 1949; *Moss v. U.S. Secret Service*, 572 F.3d
 10 962, 969 (9th Cir. 2009).

11 **II. Brodzki's Complaint is Frivolous**

12 In *Denton v. Hernandez*, 504 U.S. 25, 112 S. Ct. 727 (1992),
 13 the Supreme Court noted that "a finding of factual frivolousness is
 14 appropriate when the facts alleged rise to the level of the
 15 irrational or the wholly incredible whether or not there are
 16 judicially noticeable facts available to contradict them." *Id.* at
 17 33. In accordance with Brodzki's previous lawsuits, where he has
 18 alleged the same or similar underlying factual content, I find his
 19 claims to be frivolous. See, e.g., *Brodzki v. N. Richland Hills*,
 20 No. 1:11-cv-04683-ENV-CLP (E.D. N.Y. October 31, 2011) (finding
 21 Brodzki's claims frivolous under 28 U.S.C. § 1915(e)(2)(B)(I)).

22 Brodzki's allegations, on their face, are irrational to say
 23 the least. For example, he claims the Federal Bureau of
 24 Investigation ("FBI") "has led a campaign of violating my civil
 25 rights and using high tech equipment to cause me problems and pain.
 26 The reasoning is when I was 17 years old, I took a picture of
 27 either a teenager, or an adult took a picture of my penis."
 28 (Compl. at 2.) Brodzki says "[t]he FBI has not substantiated what

1 their problem really is with me. Vera kapka told that the FBI was
2 not going to take it up the ass from me anymore. Your honor, I was
3 never giving it to the FBI up the ass." (Compl. at 2.) After
4 referencing electronic disorientation equipment, Brodzki goes on to
5 suggest that a tort action might lie for invasion of privacy
6 because the FBI is listening to his thoughts. (Compl. at 2.)
7 These allegations, coupled with the prayer for relief, \$50,000,000
8 in damages and an injunction "TO STOP ALL HARASSMENT MIND AND
9 BODY," make clear that the facts alleged in Brodzki's complaint
10 "rise to the level of the irrational or the wholly incredible."
11 *Denton*, 504 U.S. at 33.

12 Brodzki's complaint also suffer from several legal
13 deficiencies. For example, Brodzki brings this action pursuant to
14 *Bivens v. Six Unknown Named Fed. Narcotics Agents*, 403 U.S. 388, 91
15 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), yet he only names the United
16 States of America as a defendant in this matter. See *Thomas-Lazear*
17 v. *FBI*, 851 F.2d 1202, 1207 (9th Cir. 1988) (stating that, "[t]he
18 *Bivens* remedy exists against individual officials, not against the
19 United States."); see also *Garcia v. MCC Medical Staff*, No. 11-cv-
20 1028, 2011 WL 2784600, at *2 (S.D. Cal. July 15, 2011) (holding
21 that, "[a]s an initial matter the Court finds that this action must
22 be dismissed as Plaintiff only names Federal agencies as
23 Defendants.") In addition, although Brodzki's complaint states that
24 this action was brought pursuant to 42 U.S.C. § 1983, he has failed
25 to identify a person who, acting under the color of state law,
26 deprived him of a right guaranteed under the Constitution or a
27 federal statute. See *Adams v. Arab*, No. CV-10-706-MMA, 2010 WL
28 3058373, at *2 (S.D. Cal. July 30, 2010) (same).

Conclusion

2 For the reasons set forth above, Brodzki's complaint is
3 frivolous and should be dismissed. See 28 U.S.C. §
4 1915(e)(2)(B)(i). Because it is apparent from the face of the
5 complaint that the deficiencies cannot be cured by amendment,
6 dismissal of the complaint should be with prejudice. *Karim-Panahi*
7 v. Los Angeles Police Dept., 839 F.2d 621, 623 (9th Cir. 1988);
8 *Noll v. Carlson*, 809 F.2d 1446, 1447 (9th Cir. 1987).
9 Additionally, the court should certify that any appeal from the
10 dismissal of this proceeding would not be taken in good faith. See
11 28 U.S.C. § 1915(a)(3).¹

Scheduling Order

13 The Findings and Recommendation will be referred to a district
14 judge. Objections, if any, are due January 30, 2012. The Findings
15 and Recommendation will go under advisement on January 30, 2012.

16 Dated this 12th day of January, 2012.

/s/ Dennis J. Hubel

Dennis James Hubel
United States Magistrate Judge

²⁷ See *Brodzki v. N. Richland Hills*, No. 1:11-cv-04683-ENV-CLP
28 (E.D. N.Y. October 31, 2011) (same).